

The sale of canned software is subject to tax in Illinois regardless of the form in which it is transferred. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

April 13, 2006

Dear Xxxxx:

This letter is in response to your letter dated March 14, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is a Subchapter S corporation and is a STATE corporation. The company is in the business of providing information technology services. All ABC property is located in STATE. ABC has employees and independent contractors located in STATE and in several other states. ABC provides a variety of information technology services to clients in several states. ABC seeks a ruling through this letter regarding the sales and use tax treatment applicable to the future services that will be performed by the company in Illinois.

ABC is making the following factual representations with respect to services that will be performed in Illinois by ABC:

- 1) ABC will examine a prospective client's existing information systems.
- 2) ABC will gain an understanding of the client's information needs (i.e. reporting requirements, number of users, etc).
- 3) Using the client's existing information systems, ABC will design and write application programs that will accomplish the reporting and other requirements for the client.
- 4) If ABC determines that an existing system is incapable of being modified or repaired to the extent necessary to achieve the client's information needs, ABC may recommend alternative systems that can be customized to fulfill the client's needs.

- 5) ABC neither sells software nor has any relationships with any software vendors that would give the appearance that ABC may actually sell software (i.e. ABC has no 'dealer agreements' by which ABC can act as a retail distributor of software products; ABC does not accept discounts or referral fees related to any software recommendations made).
- 6) As described in item 5 above, if ABC is required to recommend alternative information systems to a client, ABC will not actually sell any software to the client. However, ABC may help a client analyze which software packages may be able to be modified and customized to meet the client's needs.
- 7) ABC will not provide any recommendations for 'canned' software that can be used without modification to satisfy the client's information needs (any software recommendations will result in customized software for the client).
- 8) Any canned software that ABC may recommend to a client will not be purchased from ABC and then reimbursed by the client (no resale activities will occur). Rather, the client will purchase any canned software from the software manufacturer or from an unrelated third party software vendor.
- 9) After designing an appropriate information system for a client, ABC will write any necessary coding and application programs to accomplish the client's objectives.
- 10) After successful implementation of an information system, ABC will provide 'help desk' type support services for the customized software that has been implemented.
- 11) ABC will design, implement, and support local area networks and wide area networks for a client.
- 12) ABC will provide maintenance, repair, and upgrade functions for the customized software after initial implementation.
- 13) ABC does not currently have a contract to actually process any information on a customized system after the system is in place (i.e. ABC will not perform functions such as word processing, data entry, accounting functions, research, time entry, etc).
- 14) ABC will not retrieve any data from a system for a client once the system has been implemented (this function will be the responsibility of the client's employees).
- 15) ABC does not anticipate entering into a contract as described in item 13 above (rather, ABC anticipates only designing and customizing systems to meet a client's needs, and allowing the client to perform all data entry functions once the system is in place).
- 16) ABC will establish any websites for clients
- 17) All designs, codes, programs, etc. that ABC implements will be the property of the client (ABC will not have proprietary rights to the information systems that are developed).
- 18) ABC does not anticipate creating any programs 'from scratch.'
- 19) ABC will not charge a client to install and/or configure software that has been sold to the client by ABC (see items 5, 6, and 8 above). However, ABC may install and/or configure software for a client that has been purchased from an independent third party software vendor.
- 20) ABC will not provide maintenance functions for computer programs that have been sold to the client by ABC (see items 5, 6, and 8 above).
- 21) If ABC provides training or instructions for software applications, any related charges will be separately stated on a billing invoice.

It is our belief that the services described would not be subject to Illinois sales and use taxes under current Illinois law. However, we respectfully request that you provide us

with a written ruling describing the taxability of the activities described above. On a separate issue, if we are providing this services [sic] to the State government of Illinois, would the state be exempt from sales tax, even if the above services are considered taxable?

If you have any questions regarding this request, please contact INDIVIDUAL.

DEPARTMENT'S RESPONSE:

Sales of canned computer software in Illinois are subject to tax regardless of the form in which it is transferred. See 86 Ill. Adm. Code 130.1935 and general information letter ST 00-0278-GIL. Assuming that the services provided, such as installation, phone support, training, and seminars, do not require the transfer of tangible personal property to the recipients of those services, charges for such services are exempt if they are separately stated from the selling price of canned software. See 86 Ill. Adm. Code 130.1935(b). If computer software training or other support services are provided in conjunction with a sale of custom computer software or a license of computer software, the charges for that training are not subject to tax.

If the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See 86 Ill. Adm. Code 130.1935. Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk